

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Target Brands, Inc. ,

Opposer,

v.

Shaun N.G. Hughes,

Applicant.

Opposition No. 91163556

APPLICANT'S MOTION FOR ENTRY OF PROTECTIVE ORDER

Applicant Shaun N.G. Hughes hereby moves the Board for entry of a Protective Order in the form of the Board's standard protective order. A copy of the proposed Board standard protective order is attached hereto as Exhibit A.

The parties have attempted to come to agreement as to a form of Protective Order but have been unsuccessful. The attempts to reach agreement included a conference with Interlocutory Attorney, Thomas Wellington on June 28, 2005.

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07-07-2005

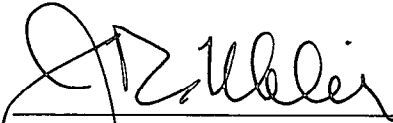
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #72

1 Applicant requests that the Board enter an Order that the parties abide by the Board's
2 standardized protective order as attached hereto as Exhibit A.

3 Dated this 7th day of July 2005.

4 Respectfully submitted

5 CHRISTENSEN O'CONNOR
6 JOHNSON KINDNESS^{PLLC}

7 

8 James R. Uhler, Registration No.25,096
9 Attorney for Applicant Shaun N.G.
10 Hughes

11
12 CERTIFICATE OF SERVICE

13 I hereby certify that on the 7th day of July, 2005, the original of Applicant's Motion For
14 Entry Of Protective Order was filed with the Court and a true copy was served via express
15 mail with postage thereon fully prepaid to:

16 Michael A. Norwick, Esq.
17 Vanessa A. Ignacio, Esq.
18 Lowenstein Sandler PC
19 65 Livingston Avenue
20 Roseland, NJ 07068
21 Attorneys for Opposer, Target Brands, Inc.

22 Executed on July 7, 2005.

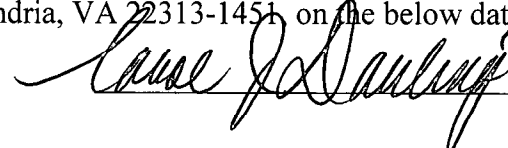
23 

24
25 CERTIFICATE OF FILING

26 I hereby certify that Applicant's Motion For Entry Of Protective Order is being deposited
27 with the U.S. Postal Service in a sealed envelope as express mail with postage thereon
fully prepaid and addressed to the Trademark Trial and Appeal Board, U.S. Patent and
Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on the below date.

Date:

July 7, 2005



1
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4 Target Brands, Inc. ,

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7 Shaun N.G. Hughes,

8 Applicant.

9 **PROTECTIVE ORDER**

10 **1) Classes of Protected Information.**

11 The Rules of Practice in Trademark Cases provide that all inter partes proceeding
12 files, as well as the involved registration and application files, are open to public
13 inspection. The terms of this order are not to be used to undermine public access to
14 files. When appropriate, however, a party or witness, on its own or through its
attorney, may seek to protect the confidentiality of information by employing one of
the following designations.

15 **Confidential**—Material to be shielded by the Board from public access.

16 **Highly Confidential**—Material to be shielded by the Board from public access and
subject to agreed restrictions on access even as to the parties and/or their attorneys.

17 **Trade Secret/Commercially Sensitive**—Material to be shielded by the Board from
18 public access, restricted from any access by the parties, and available for review by
outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by
19 independent experts or consultants for the parties.

20 **2) Information Not to Be Designated as Protected.**

21 Information may not be designated as subject to any form of protection if it (a) is, or
22 becomes, public knowledge, as shown by publicly available writings, other than
23 through violation of the terms of this document; (b) is acquired by a non-designating
party or non-party witness from a third party lawfully possessing such information and
24 having no obligation to the owner of the information; (c) was lawfully possessed by a
non-designating party or non-party witness prior to the opening of discovery in this
25 proceeding, and for which there is written evidence of the lawful possession; (d) is
disclosed by a non-designating party or non-party witness legally compelled to
26 disclose the information; or (e) is disclosed by a non-designating party with the
approval of the designating party.

1 **3) Access to Protected Information.**

2 The provisions of this order regarding access to protected information are subject to
3 modification by written agreement of the parties or their attorneys, or by motion filed
4 with and approved by the Board.

5 Judges, attorneys, and other employees of the Board are bound to honor the parties'
6 designations of information as protected but are not required to sign forms
7 acknowledging the terms and existence of this order. Court reporters, stenographers,
8 video technicians or others who may be employed by the parties or their attorneys to
9 perform services incidental to this proceeding will be bound only to the extent that the
10 parties or their attorneys make it a condition of employment or obtain agreements
11 from such individuals, in accordance with the provisions of paragraph 4.

- 12 • **Parties** are defined as including individuals, officers of corporations, partners of
13 partnerships, and management employees of any type of business organization.
- 14 • **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**,
15 including support staff operating under counsel's direction, such as paralegals or legal
16 assistants, secretaries, and any other employees or independent contractors operating
17 under counsel's instruction.
- 18 • **Independent experts or consultants** include individuals retained by a party for
19 purposes related to prosecution or defense of the proceeding but who are not otherwise
20 employees of either the party or its attorneys.
- 21 • **Non-party witnesses** include any individuals to be deposed during discovery or trial,
22 whether willingly or under subpoena issued by a court of competent jurisdiction over
23 the witness.

24 **Parties** and their **attorneys** shall have access to information designated as
25 **confidential** or **highly confidential**, subject to any agreed exceptions.

26 **Outside counsel, but not in-house counsel**, shall have access to information
27 designated as **trade secret/commercially sensitive**.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be
afforded access to **confidential** or **highly confidential** information in accordance with
the terms that follow in paragraph 4. Further, **independent experts or consultants**
may have access to **trade secret/commercially sensitive** information if such access is
agreed to by the parties or ordered by the Board, in accordance with the terms that
follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any
individual not already provided access to such information by the terms of this order,
the individual shall be informed of the existence of this order and provided with a

1 copy to read. The individual will then be required to certify in writing that the order
2 has been read and understood and that the terms shall be binding on the individual. No
3 individual shall receive any protected information until the party or attorney proposing
4 to disclose the information has received the signed certification from the individual. A
form for such certification is attached to this order. The party or attorney receiving the
completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

6 In addition to meeting the requirements of paragraph 4, any party or attorney
7 proposing to share disclosed information with an independent expert or consultant
8 must also notify the party which designated the information as protected. Notification
9 must be personally served or forwarded by certified mail, return receipt requested, and
shall provide notice of the name, address, occupation and professional background of
the expert or independent consultant.

10 The party or its attorney receiving the notice shall have ten (10) business days to
11 object to disclosure to the expert or independent consultant. If objection is made, then
12 the parties must negotiate the issue before raising the issue before the Board. If the
13 parties are unable to settle their dispute, then it shall be the obligation of the party or
attorney proposing disclosure to bring the matter before the Board with an explanation
of the need for disclosure and a report on the efforts the parties have made to settle
their dispute. The party objecting to disclosure will be expected to respond with its
arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

15 Responses to interrogatories under Federal Rule 33 and requests for admissions under
16 Federal Rule 36, and which the responding party reasonably believes to contain
17 protected information shall be prominently stamped or marked with the appropriate
18 designation from paragraph 1. Any inadvertent disclosure without appropriate
19 designation shall be remedied as soon as the disclosing party learns of its error, by
informing all adverse parties, in writing, of the error. The parties should inform the
Board only if necessary because of the filing of protected information not in
accordance with the provisions of paragraph 12.

7) Production of Documents.

21 If a party responds to requests for production under Federal Rule 34 by making copies
22 and forwarding the copies to the inquiring party, then the copies shall be prominently
23 stamped or marked, as necessary, with the appropriate designation from paragraph 1.
24 If the responding party makes documents available for inspection and copying by the
inquiring party, all documents shall be considered protected during the course of
inspection. After the inquiring party informs the responding party what documents are
25 to be copied, the responding party will be responsible for prominently stamping or
26 marking the copies with the appropriate designation from paragraph 1. Any
inadvertent disclosure without appropriate designation shall be remedied as soon as
27 the disclosing party learns of its error, by informing all adverse parties, in writing, of

1 the error. The parties should inform the Board only if necessary because of the filing
2 of protected information not in accordance with the provisions of paragraph 12.

3 **8) Depositions.**

4 Protected documents produced during a discovery deposition, or offered into evidence
5 during a testimony deposition shall be orally noted as such by the producing or
6 offering party at the outset of any discussion of the document or information contained
7 in the document. In addition, the documents must be prominently stamped or marked
8 with the appropriate designation.

9 During discussion of any non-documentary protected information, the interested party
10 shall make oral note of the protected nature of the information.

11 The transcript of any deposition and all exhibits or attachments shall be considered
12 protected for 30 days following the date of service of the transcript by the party that
13 took the deposition. During that 30-day period, either party may designate the portions
14 of the transcript, and any specific exhibits or attachments, that are to be treated as
15 protected, by electing the appropriate designation from paragraph 1. Appropriate
16 stampings or markings should be made during this time. If no such designations are
17 made, then the entire transcript and exhibits will be considered unprotected.

18 **9) Filing Notices of Reliance.**

19 When a party or its attorney files a notice of reliance during the party's testimony
20 period, the party or attorney is bound to honor designations made by the adverse party
21 or attorney, or non-party witness, who disclosed the information, so as to maintain the
22 protected status of the information.

23 **10) Briefs.**

24 When filing briefs, memoranda, or declarations in support of a motion, or briefs at
25 final hearing, the portions of these filings that discuss protected information, whether
26 information of the filing party, or any adverse party, or any non-party witness, should
27 be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of
this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to
facilitate the prosecution or defense of this case. The recipient of any protected
information disclosed in accordance with the terms of this order is obligated to
maintain the confidentiality of the information and shall exercise reasonable care in
handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief
that discusses such information, the protected information or portion of the brief

1 discussing the same should be redacted from the remainder. A rule of reasonableness
2 should dictate how redaction is effected.

3 Redaction can entail merely covering a portion of a page of material when it is copied
4 in anticipation of filing but can also entail the more extreme measure of simply filing
5 the entire page under seal as one that contains primarily confidential material. If only a
6 sentence or short paragraph of a page of material is confidential, covering that material
7 when the page is copied would be appropriate. In contrast, if most of the material on
8 the page is confidential, then filing the entire page under seal would be more
9 reasonable, even if some small quantity of non-confidential material is then withheld
10 from the public record. Likewise, when a multi-page document is in issue,
11 reasonableness would dictate that redaction of the portions or pages containing
12 confidential material be effected when only some small number of pages contain such
13 material. In contrast, if almost every page of the document contains some confidential
14 material, it may be more reasonable to simply submit the entire document under seal.

15 **Occasions when a whole document or brief must be submitted under seal should
16 be very rare.**

17 Protected information, and pleadings, briefs or memoranda that reproduce, discuss or
18 paraphrase such information, shall be filed with the Board under seal. The envelopes
19 or containers shall be prominently stamped or marked with a legend in substantially
20 the following form:

21 **CONFIDENTIAL**

22 *This envelope contains documents or information that are subject to a protective order or
23 agreement. The confidentiality of the material is to be maintained and the envelope is not to
24 be opened, or the contents revealed to any individual, except by order of the Board.*

25 **13) Acceptance of Information; Inadvertent Disclosure.**

26 Acceptance by a party or its attorney of information disclosed under designation as
27 protected shall not constitute an admission that the information is, in fact, entitled to
protection. Inadvertent disclosure of information which the disclosing party intended
to designate as protected shall not constitute waiver of any right to claim the
information as protected upon discovery of the error.

1 **14) Challenges to Designations of Information as Protected.**

2 If the parties or their attorneys disagree as to whether certain information should be
3 protected, they are obligated to negotiate in good faith regarding the designation by
4 the disclosing party. If the parties are unable to resolve their differences, the party
5 challenging the designation may make a motion before the Board seeking a
6 determination of the status of the information.

7 A challenge to the designation of information as protected must be made substantially
8 contemporaneous with the designation, or as soon as practicable after the basis for
9 challenge is known. When a challenge is made long after a designation of information

1 as protected, the challenging party will be expected to show why it could not have
2 made the challenge at an earlier time.

3 The party designating information as protected will, when its designation is timely
4 challenged, bear the ultimate burden of proving that the information should be
5 protected.

6 **15) Board's Jurisdiction; Handling of Materials After Termination.**

7 The Board's jurisdiction over the parties and their attorneys ends when this proceeding
8 is terminated. A proceeding is terminated only after a final order is entered and either
9 all appellate proceedings have been resolved or the time for filing an appeal has
10 passed without filing of any appeal.

11 The parties may agree that archival copies of evidence and briefs may be retained,
12 subject to compliance with agreed safeguards. Otherwise, within 30 days after the
13 final termination of this proceeding, the parties and their attorneys shall return to each
14 disclosing party the protected information disclosed during the proceeding, and shall
15 include any briefs, memoranda, summaries, and the like, which discuss or in any way
16 refer to such information. In the alternative, the disclosing party or its attorney may
17 make a written request that such materials be destroyed rather than returned.

18 **16) Other Rights of the Parties and Attorneys.**

19 This order shall not preclude the parties or their attorneys from making any applicable
20 claims of privilege during discovery or at trial. Nor shall the order preclude the filing
21 of any motion with the Board for relief from a particular provision of this order or for
22 additional protections not provided by this order.

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By Order of the Board, effective _____.
